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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COYNESS L. ENNIX, JR., M.D.

Plaintiff,

v.

ALTA BATES SUMMIT MEDICAL
CENTER,

Defendants.

Case No.: C 07-2486 WHA (JCS)

**DECLARATION OF ANDREW E.
SWEET PURSUANT TO LOCAL
RULE 6-2(A) IN SUPPORT OF JOINT
STIPULATION TO ENLARGE TIME
FOR DISCLOSURE OF EXPERT
REPORTS OF 1) CARDIAC
SURGEON EXPERTS AND 2)
STATISTICIAN EXPERTS**

Date: None
Time: None
Dept: Ctrm. 9, 19TH Floor

Trial Date: June 2, 2008

I, Andrew E. Sweet, declare:

1. I am an attorney in the firm of Moscone, Emblidge & Quadra LLP, counsel for Plaintiff Coyness L. Ennix, Jr., M.D., in this action. I am licensed to practice law in the State of California and before this Court. I have personal knowledge of the facts stated in this declaration.

2. Beginning in October of 2007, Dr. Ennix sought discovery of documents that Defendant used to conclude that Dr. Ennix fell below the standard of care in his cardiac surgery practice. Defendant disagrees with Plaintiff's characterization.

1 3. Defendant produced a large quantity of documents but also refused to produce a
2 substantial volume of responsive discovery documents. These documents consist of medical
3 records and statistical data Defendant used in its peer review of Dr. Ennix and statistical data
4 relating to similarly situated cardiac surgeons. This information is crucial to Dr. Ennix's ability
5 to prove he was treated much more harshly than Caucasian cardiac surgeons. Plaintiff made
6 good faith and repeated efforts to obtain the documents, and ultimately brought Defendant's lack
7 of compliance to the attention of the Honorable Joseph C. Spero. Defendant disagrees with
8 Plaintiff's characterization.

9 4. On October 29, 2007, Plaintiff propounded Request for Production of Documents,
10 Set Two ("RFP #2"), which called for the documents at issue. On November 13, 2007, Plaintiff
11 propounded Request for Production of Documents, Set Three ("RFP #3"), which also called for
12 the documents at issue. On November 28, 2007, Defendant served Objections and Responses to
13 RFP #2 and did not produce the documents at issue. On December 13, 2007, Defendant served
14 Objections and Responses to RFP #3 and did not produce the documents at issue.

15 5. On December 10, 2007, this firm sent Defendant a letter to meet and confer as to
16 the failure to produce documents pursuant to RFP #2. On December 13, 2007, this firm sent
17 Defendant a letter to request the parties meet and confer in person as to the failure to produce
18 documents pursuant to RFP #2 and RFP #3. On December 18, 2007, the parties met and
19 conferred. On December 26, 2007, the parties submitted a joint letter to Judge Spero, outlining
20 the dispute related to these documents.

21 6. On January 11, 2008, Judge Spero held a hearing and on January 15, 2008, issued
22 the Order Granting in part and Denying in Part Motion to Compel Medical Peer Review
23 Information requiring Defendant to produce certain documents and information to Plaintiff
24 subject to an Attorney's Eyes Only confidentiality designation. The production date specified in
25 the Order is January 25, 2008, the same day that expert reports must be disclosed.

26 7. Plaintiff and Defendant assign to the other responsibility that these documents
27 will be produced at the end of the discovery period. Nonetheless, Plaintiff and Defendant agree
28 to stipulate to an enlargement of time as described in the accompanying stipulation.

